



**MISSOURI
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May 18, 2006

The Honorable Jay Nixon
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101

Dear Attorney General Nixon:

I read in the press that you are engaged in negotiations to settle the adoption subsidy lawsuit. I agree that a settlement of this lawsuit which takes into consideration what is in the best interest of the state's children is proper. However, it was disconcerting to learn of the settlement negotiations in the press and not from the attorney assigned to represent the department. As the client and the defendant in this lawsuit, it is critical that the Department of Social Services (DSS) be involved in defining the parameters of any settlement. The lack of consultation between your office and the department prior to settlement negotiations with plaintiffs has been a concern of mine, not only in this case but in other recent cases, such as the Dey Pharmaceutical settlement and Non-Emergency Medical Transportation (NEMT) case. I request that you invite DSS Chief Counsel, Harry Williams, to join in settlement discussions. That being said, outlined below are the settlement terms we hope you achieve and for which the department would be willing to settle in this litigation.

As I stated in my letter of May 12th, DSS is in favor of settling this case as it relates to the issue involving the review and renewal of existing adoption subsidy contracts. The department also understands and accepts that reasonable attorney fees would be a part of any settlement. Settlement of these issues is clearly what I anticipated in my letter. Such a settlement would allow the DSS (Children's Division) to create an improved adoption subsidy program supported by new legislation focusing on the needs of the children.

As also stated in my previous letter, any settlement in this case must recognize the right of the state to define and determine the parameters and direction of the adoption subsidy program as it relates to the operation of a state program funded exclusively by state funds. The ability to exercise that

right unfettered by court or federal government interference is an important issue that must be resolved and resolved in favor of the state. For that reason, I again strongly express the desire of the department for your office to mount a vigorous defense of the right of the state to define and administer its adoption subsidy program because this issue has implications far beyond this program.

Please let me know what the department can do to assist you in reaching a settlement on the terms outlined above.

Respectfully,

K. Gary Sherman
Director

KGS:dl